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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of
ROCKY MOUNTAIN POWER for Approval
of the Pole Attachment Agreement between
PacifiCorp and First Digital

DOCKET No. 11-035-____

**APPLICATION OF ROCKY
MOUNTAIN POWER**

PacifiCorp, doing business in Utah as Rocky Mountain Power (“Rocky Mountain Power” or “Company”) respectfully requests an order under Utah Admin. Code R746-345-3 approving a Pole Attachment Agreement (the “Agreement”) between PacifiCorp and First Digital Telecom LLC (“First Digital” or “Licensee”), dated October 24, 2011. Each of Rocky Mountain Power and First Digital are referred to as a “Party” and together referred to as the “Parties.”

In support of its Application, Rocky Mountain Power states as follows:

1. Rocky Mountain Power is a public utility in the state of Utah and is subject to the jurisdiction of the Commission with regard to its rates and service. As a public utility that permits attachments to its poles by an attaching entity, Rocky Mountain Power is obligated to provide that service pursuant to the requirements in Utah Admin. Rules, R.746-345 governing pole attachments. Rocky Mountain has previously submitted for Commission approval non-reciprocal pole attachment agreements with TCG Utah and Leavitt Group Enterprises (approved by the Commission in Docket Nos. 09-035-52 and 10-035-01, respectively), as well as with

Alliant Techsystems, Break Away Wireless, and CentraCom Interactive (Docket Nos. 10-035-59, 10-035-61, and 11-035-05 respectively).

2. Communications regarding this Application should be addressed to:

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1. Under R746-345-3(B) (1), the parties to pole attachment contracts “may voluntarily negotiate an alternative contract . . . [and] shall submit the negotiated contract to the Commission for approval.” The Agreement was voluntarily negotiated between Rocky Mountain Power and First Digital. The Agreement represents the parties’ agreed-to terms and conditions for First Digital’s attachments to Rocky Mountain Power’s poles in Utah.

2. The Agreement negotiated between Rocky Mountain Power and First Digital is substantially identical to the pole attachment agreement with CentraCom Interactive approved in Docket No. 11-035-05. Minor differences exist, such as addition of a table of contents for convenience of the reader and the inclusion of definitions for Attachment Space, Cost Estimate,

Credit Requirement, Estimated Attachments, Material Adverse Change, and Security. Definitions of Audit and Periodic Inspection were consolidated into Inspection.

3. The Agreement negotiated between Rocky Mountain Power and First Digital contains terms that differ from the agreement approved by the Commission in Docket 04-999-03 known as the “Safe Harbor”. Those differences are as follows:

a. The contact rental set forth in the Agreement was calculated using Rocky Mountain Power’s Tariff approved as Electric Service Schedule No. 4.

b. The Agreement reflects the non-reciprocal relationship between the Parties in contrast to the reciprocal relationship contemplated by the Safe Harbor agreement.

c. The Agreement excludes Licensee pole top antennas from the definition of Equipment.

d. Rocky Mountain Power modified the sections governing the application process to match its existing business practices in exchange for certain benefits to Licensee. To reduce uncertainty for First Digital, the Agreement section 2.03 enumerates the grounds upon which it may reject an application for attachment and section 7.02 delineates specific events of default. Next, while rent begins to accrue sooner than under the Safe Harbor, First Digital is allowed a longer period to pay outstanding invoices, from 30 days, per the Safe Harbor Section 5.03, to 45 days in the Agreement Section 4.04. Furthermore, First Digital will receive a much longer time to complete installation of Attachments in Section 3.03 – 180 days instead of 90 days -- and may extend this period without resubmitting an application or paying another fee as envisioned by the Safe Harbor Section 3.08. In the Agreement Section 3.07, if First Digital does not accept the cost to accommodate its continued attachment when requested to relocate, Licensee must remove the attachment 10 days sooner than provided in the Safe Harbor Section

3.12 which allows Rocky Mountain Power to accommodate third-party relocation requests faster. In addition, the Agreement Section 7.01 modified the Safe Harbor Termination requirements in Article VIII, allowing each Party to terminate the Agreement upon ninety (90) days written notice to the other, within which time Licensee must remove its attachments. Furthermore, the Agreement Section 3.10 adds termination of the permit for any Pole as a remedy for Licensee's failure to timely provide evidence of third party consents, permits, licenses or grants for access to or use of the land upon which a Pole is situated.

e. In contrast to the Safe Harbor sections 3.01 and 5.01, Licensee overloading requires an application and third party overloading is not allowed. This change allows Rocky Mountain Power the opportunity to evaluate pole loading prior to overloading.

f. Section 3.03 of the Agreement varies from Safe Harbor section 3.02. Licensee must submit an Application within ten business days after installation of service drops when installed on a pole where no prior permit exists or where equipment is placed outside the previously permitted space. This change provides Rocky Mountain Power adequate opportunity to review the installation for compliance with applicable construction standards, and provides a mechanism for Rocky Mountain Power to assess rent for the additional space used. For service drops within existing permitted space, Licensee need only provide notice within ten business days after installation.

g. Several provisions were modified to reflect regulatory requirements, industry practice, or National Electric Safety code requirements.

h. The Agreement contains the Company's updated terms regarding indemnification, credit and insurance, as well as limitations of liability and warranties, which terms are reflected throughout the Agreement. First Digital must maintain commercial general

liability insurance at a higher limit than provided in the Safe Harbor, maintain umbrella liability insurance to cover any shortfalls in other coverage, and maintain business interruption insurance. These increased requirements reflect the changes to economic conditions since 2004.

i. Some provisions of the Safe Harbor have been relocated to another place in the agreement, consolidated or otherwise clarified for stylistic purposes. Minor changes from the Safe Harbor agreement are simply non-substantive wording changes. A table of contents was added for convenience of the reader.

WHEREFORE, Rocky Mountain Power respectfully requests that the Commission issue an order approving the Agreement submitted herewith and finding the terms and conditions of the Agreement to be just and reasonable and in the public interest.

DATED this 5th day of December 2011.

Respectfully submitted,

Daniel E. Solander
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Attorneys for Rocky Mountain Power